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ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Page 1 of 7
FILED
AUG 29 2005
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT T. NELSON,
Plaintiff,

-v-

UNIVERSITY OF TEXAS AT DALLAS,
Defendant

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§

3-05 CV 1741-N
Case No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE;

Robert T. Nelson sues University of Texas at Dallas ("UTD") because UTD terminated him while he was on FMLA leave. Mr. Nelson went on FMLA leave after he was severely injured in a car accident and his son committed suicide. Mr. Nelson had the serious medical conditions of rib fractures, depression, anxiety, and severe fatigue. Mr. Nelson completed all FMLA related documents given to him by UTD. Mr. Nelson started FMLA leave April 25, 2005. On May 25, 2005, Dr. David Lee filled out a FMLA Certification of Health Care Provider, a form created by the Department of Labor and given to Mr. Nelson by UTD. Dr. Lee stated that Mr. Nelson was "currently incapacitated at least for 4-6 weeks." Dr. Lee also stated that Mr. Nelson would need additional intermittent or less than full schedule leave. Despite this notice, UTD fired Mr. Nelson on June 7, 2005 for absenteeism. Mr. Nelson's prior attorney, Bob Baskett, contacted UTD prior to the expiration of Mr. Nelson's twelve weeks of FMLA leave. However, UTD refused to correct their error or reinstate Mr. Nelson to his position at the end of twelve weeks.

Mr. Nelson respectfully shows the following:

I.
PARTIES

1. Mr. Nelson is an individual who resides at 2402 Brownlee Blvd., Rowlett, TX 75088.

2. UTD is a coeducational institution of higher education located in the city of Richardson. UTD is organized under TEX. EDUC. CODE § 109.01. UTD may be served with process by serving the administrative head of the governmental unit being sued, David E. Daniel, at 800 West Campbell Rd., Richardson, TX 75080.

II.
JURISDICTION AND VENUE

3. Jurisdiction is proper because UTD is part of the government of Texas and has its primary place of business in Richardson, Texas. An exercise of jurisdiction will not offend traditional notions of fair play and substantial justice.

4. Venue is appropriate in the Northern District of Texas because the acts giving rise to this suit occurred in Richardson, Dallas County, Texas.

III.
FACTS

5. Mr. Nelson worked for UTD for over a year prior to his taking of FMLA leave. In that time, Mr. Nelson worked more than 1,250 hours. Mr. Nelson worked at the Richardson campus at 800 West Campbell Rd., Richardson, TX 75080. UTD has over fifty employees within seventy-five miles of the Richardson campus.

6. On April 18, 2005, Mr. Nelson's son committed suicide. On April 25, 2005, Mr. Nelson was broadsided by an uninsured driver who ran a red light. This car collision left Mr. Nelson with three fractured ribs, bruised spleen, pneumonia, and sever pain.

7. Following the car collision, Mr. Nelson contacted UTD and notified them of his need for medical leave. Mr. Nelson followed up with requests for medical leave from doctors on April 28, 2005 and May 3, 2005.

8. On May 19, 2005, Mr. Nelson received a Certification of Health Care Provider form from Vivian Rutledge, Manager of Employment. Dr. David Lee completed this form on May 25, 2005 and transmitted it to UTD.

9. The Certification of Health Care Provider clearly states "Pt. currently incapacitated at least for 4-6 weeks." The Certification of Health Care Provider also states that Mr. Nelson will require intermittent or less than full schedule work.

10. On June 1, 2005, Ms. Rutledge completed the DOL standardized Employer Response to Employee form. Ms. Rutledge notes on the form that the Certification of Health Care Provider form was provided May 26, 2005.

11. On June 7, 2005, Ms. Karen M. Jarrell sent a letter to Mr. Nelson stating that he was fired effective June 3, 2005 for not showing up to work for three consecutive days.

12. On June 21, 2005, Bob Baskett, Mr. Nelson's attorney at the time, sent a letter notifying UTD of its error and requesting a meeting. Although Mr. Nelson's twelve weeks of FMLA leave had not expired, UTD refused to correct its error, refused to reinstate Mr. Nelson, and refused to meet with Mr. Baskett.

IV. VIOLATION OF THE FAMILY MEDICAL LEAVE ACT

13. Mr. Nelson is an eligible employee under the FMLA. Mr. Nelson for a year prior to April 25, 2005. In the year preceding April 25, 2005, Mr. Nelson worked 1,250 hours.

14. UTD is a qualifying employer under the act. Mr. Nelson's worksite was 800 West Campbell Rd., Richardson, TX 75080. UTD had fifty employees within seventy-five miles of Mr. Nelson's worksite.

15. Mr. Nelson was entitled to leave for his own serious health condition. Mr. Nelson had a period of incapacity of more than three calendar days. Mr. Nelson sought treatment two or more times by a health care provider. Mr. Nelson sought treatment at least once by a health care provider that resulted in a regimen of continuing treatment under the supervision of the health care provider.

16. Mr. Nelson was entitled to up to twelve weeks of leave starting April 25, 2005.

17. Mr. Nelson was eligible for leave on June 1, 2005, June 2, 2005, and June 3, 2005.

18. UTD fired Mr. Nelson effective June 3, 2005.

19. Mr. Nelson was entitled to return to the same position he held when his leave commenced, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

20. UTD refused to reinstate Mr. Nelson at the conclusion of his FMLA leave.

V. DAMAGES

21. Mr. Nelson is entitled to economic damages in an amount of approximately \$186,200 for lost wages, including back pay and front pay. Mr. Nelson is entitled to economic damages in an amount of approximately \$630,000 for lost benefits.

22. Mr. Nelson is entitled to interest at the maximum rate allowed by law.

23. Mr. Nelson is entitled to liquidated damages equal to the sum of the lost wages and benefits or actual monetary losses and interest.

24. In the alternative, Mr. Nelson pleads that he is entitled to hiring, reinstatement, and/or promotion.

VI.
CONDITIONS PRECEDENT

25. All conditions precedent to the bringing of this suit have been satisfied or have been fulfilled.

VII.
JURY DEMAND

26. Plaintiff demands a trial by jury and tenders the appropriate fee.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and that upon a trial on the merits that Plaintiff be awarded the relief requested in this Complaint and such other and further relief to which he may be justly entitled.

Respectfully submitted,
ROB WILEY, P.C.

By: 

Robert J. Wiley
Texas Bar No. 24013750
TBLS – Board Certified Specialist
Labor and Employment Law
Turtle Creek Tower 650
3131 Turtle Creek Boulevard
Dallas, Texas 75219
Telephone: (214) 528-6500
Facsimile: (214) 528-6511
Attorney for Plaintiff
Robert T. Nelson

CERTIFICATE OF INTERESTED PARTIES

The following have an interest in this case:

1. Mr. Robert T. Nelson, 2402 Brownlee Blvd., Rowlett, TX 75088.
2. The University of Texas at Dallas, 800 West Campbell Rd., Richardson, TX 75080.
3. Mr. Robert J. Wiley and the law office of Rob Wiley, P.C., 3131 Turtle Creek Blvd., Ste. 650, Dallas, TX 75219

A handwritten signature in black ink, appearing to read "Rob Wiley", with a long horizontal flourish extending to the right.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Robert T. Nelson

DEFENDANTS

University of Texas at Dallas

AUG 29 2005

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant C. F. R. U.S. DISTRICT COURT
(IN U.S. PLAINTIFF CASES ONLY DISTRICT OF TEXAS)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Wiley, Rob Wiley, P.C., 3131 Turtle Creek Blvd, Ste. 650,
Dallas, TX 75219 (214) 528) 6500

Attorneys (If Known)

3-05 CV 1741-N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

VI. CAUSE OF ACTION

Brief description of cause: Wrongful termination under the Family Medical Leave Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 26, 2005

Robert J. Wiley

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE